



City of Wheatland

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CITY COUNCIL MEETING

Date: Sept. 8, 2009

STAFF REPORT

Agenda Item: 4.3

Subject: Second Reading by the City Council of the City of Wheatland of the Administrative Citations Ordinance

Prepared by: Tim Raney, Community Development Director

Recommendation:

Staff recommends the City Council conduct a second reading of the Administrative Citation Ordinance. Staff is recommending adoption of the Administrative Citation Ordinance and the Resolution establishing a schedule of fines for violations of the Ordinance.

Discussion:

On August 11, 2009, the Wheatland City Council conducted a first reading of the Administrative Citation Ordinance. The Administrative Citation Ordinance provides the City with an additional enforcement tool by allowing the issuing of citations and fines for violators of the Municipal Code. The City Council's review of the Ordinance was based on recommendations made by the Nuisance Abatement Committee.

The Nuisance Abatement Committee conducted two workshops to discuss the Administrative Citation Ordinance. The workshops were held in the Wheatland Community Center on April 21, 2009 and May 5, 2009. Members of the general citizenry were invited to attend and provide comments. Staff provided workbooks to the committee members and facilitated the discussions. Staff also worked with the committee to form a consensus on each item. In most cases, the committee

unanimously agreed on the sections of the code; however, in some cases, a split was recorded.

The Wheatland City Attorney has prepared the Administrative Citation Ordinance based on the direction provided by the Committee, as well as the Resolution, and the new Administrative Citations Chapter of the Municipal Code. Exhibits are attached and provided for council's review and discussion.

Exhibits:

- A. Wheatland Municipal Code Chapter 1.18, Administrative Citations
- B. Ordinance of the City Council establishing the Administrative Citation Code Enforcement Program
- C. Resolution establishing a schedule of fines relating to Administrative Citations for Municipal Code Violations

EXHIBIT A

Wheatland Municipal Code Chapter 1.18 Administrative Citations

Sections:

- 1.18.010 Definitions
- 1.18.020 Applicability
- 1.18.030 Preliminary Notice Procedures for Continuing Violations
- 1.18.040 Administrative Citation
- 1.18.050 Amount of Fines
- 1.18.060 Payment of the Fine
- 1.18.070 Request for Administrative Hearing
- 1.18.080 Advance Deposit Hardship Waiver
- 1.18.090 Hearing Officers
- 1.18.100 Administrative Hearing Procedure
- 1.18.110 Hearing Officer's Decision
- 1.18.120 Appeal of Hearing Officer's Decision
- 1.18.130 Right to Judicial Review
- 1.18.140 Late Payment Charges and Interest
- 1.18.150 Collection of Fines, Late Charges, Interest and Costs
- 1.18.160 Notices

1.18.010 Definitions.

A. "Cited Person" means a person who violates the Code or who is otherwise responsible for a Code violation and who is named in an administrative citation issued and served pursuant to this chapter.

B. "Code" means this Wheatland Municipal Code, including any ordinances amending the Code but not yet incorporated into the Code Book, and any uniform or national code adopted by this Code.

C. "Continuing Code Violation" means a violation of the Code of the type described at section 1.18.030.A.

D. "Enforcement Officer" means any police officer, or any officer or employee of the city authorized by the city manager to issue administrative citations under this Code.

1.18.020 Applicability.

This chapter provides for the issuance of administrative citations and collection of fines to enforce any violation of this Code as an enforcement remedy in addition to all other criminal and

civil remedies that may be pursued by the City. Use of this chapter shall be at the sole discretion of the City.

1.18.030 Preliminary Notice Procedures for Continuing Violations.

A. In addition to the other provisions of this chapter, continuing violations of this Code that pertain to building, plumbing, electrical, or other similar structural or zoning issues, and that do not create an immediate danger to health or safety (a "Continuing Code Violation"), shall be subject to the procedures set forth in this section.

B. Whenever an Enforcement Officer determines that a Continuing Code Violation is occurring or exists, he or she may issue and serve a written compliance order on any person responsible for the violation.

1. The compliance order shall state that the person responsible for the Continuing Code Violation has 30 days from the date of the compliance order, or such additional time the Enforcement Officer determines is reasonably necessary, to correct or otherwise remedy the violation.

2. A compliance order issued pursuant to this section shall contain the following information:

a. The date(s) and location of the violation;

b. The section(s) of this Code violated and a description of the violation;

c. The action(s) required to correct the violation;

d. The deadline to correct the violation, which also shall be the date after which an administrative citation may be issued and administrative penalties begin to accrue if compliance with the order has not been achieved; and

e. The amount of the applicable administrative citation fine in the event the violation is not timely corrected and a citation is issued.

3. In cases where the violation involves real property, a copy of the compliance order also shall be served on the owner of the subject real property, if the owner is different from the person who committed the violation or who is otherwise responsible for the violation.

4. If the Enforcement Officer determines that the Continuing Code Violation has been corrected within the time specified in the compliance order, no further action shall be taken under this chapter.

5. If full compliance is not achieved within the period specified in the compliance order, the Enforcement Officer then may issue an administrative citation pursuant to section 1.18.040.

6. No administrative citation shall be issued by the City for a Continuing Code Violation subject to this section until after there is continued non-compliance beyond the deadline stated in a compliance order issued under this section.

C. A written compliance order shall be served pursuant to the manner prescribed by section 1.18.160.

1.18.040 Administrative Citation.

A. When an Enforcement Officer determines that a violation of this Code has occurred, or that a Continuing Code Violation continues after the deadline set forth in a compliance order issued pursuant to section 1.18.030, the Enforcement Officer may issue and

serve an administrative citation on any person who committed the violation or who is otherwise responsible for the violation.

B. In cases where the violation involves real property, a copy of the administrative citation also shall be served on the owner of the subject real property, if the owner is different from the person who committed the violation or who is otherwise responsible for the violation.

C. Each administrative citation shall contain the following information:

1. The date(s) of the violation;
2. The name of the person who violated the Code or who is otherwise responsible for the Code violation;
3. The address or a definite description of the location where the violation occurred;
4. The section(s) of this Code violated and a description of the violation;
5. The amount of the fine for the Code violation;
6. A description of the fine-payment process, including a description of the time within which and the place at which the fine shall be paid;
7. An order prohibiting the continuation or repeated occurrence of the Code violation described in the administrative citation;
8. A statement of the increased fines for additional citations issued for the same violation within the following year;
9. A description of the administrative citation hearing process, including the time within which the administrative citation may be contested and the place from which the Cited Person may obtain a form to request a hearing to contest the administrative citation; and
10. The name and signature of the citing Enforcement Officer.

D. An administrative citation shall be served pursuant to the manner prescribed by section 1.18.160.

E. Whenever the Cited Person is a person under the age of 18, the Enforcement Officer shall provide copies of all notices and orders specified in this chapter to the parent(s) and/or legal guardian(s) of the Cited Person. Any fine levied pursuant to this chapter may be levied against the juvenile and the parent(s) and/or legal guardian(s) of the juvenile, and the juvenile and parent(s)/legal guardian(s) shall be jointly and severally liable for the fine and related costs. The parent(s) and/or legal guardian(s) shall have the right to a hearing and judicial review as set forth in this chapter.

1.18.050 Amount of Fines.

A. The City Council shall adopt, and may amend from time to time, a resolution establishing a schedule of fines for Code violations imposed pursuant to this chapter.

B. The schedule of fines shall specify increased fines for new citations for different violations of the same Code provision by the same person within one year from the date of an administrative citation.

C. The schedule of fines shall specify: (1) the amount of late payment charges imposed for the payment of a fine after the due date stated in the administrative citation; and (2) the rate of interest charged for late payments after the due date stated in the administrative citation.

D. For purposes of determining the amount of fines imposed for administrative citations issued under this chapter, a separate violation occurs on each and every day during any

portion of which a violation of any provision of this Code is committed, permitted or allowed to continue.

1.18.060 Payment of the Fine.

A. Upon receipt of an administrative citation, the Cited Person must pay the amount of the fine at the City Clerk's office at Wheatland City Hall within 30 days from the date of the administrative citation.

B. Any administrative citation fine paid pursuant to section 1.18.060.A shall be refunded in accordance with section 1.18.110.D or 1.18.120.F if it is determined, after a hearing or appeal, that the Cited Person charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation.

C. Payment of a fine under this chapter shall not excuse failure to correct the violation or discharge any continuation or repeated occurrence of the Code violation that is the subject of the administrative citation.

1.18.070 Request for Administrative Hearing.

A. Any Cited Person may contest whether there was a violation of the Code or whether the Cited Person was the responsible party by completing a request-for-hearing form and returning it to the City Clerk's office within 30 days from the date of the administrative citation. Any Cited Person who requests an administrative hearing to contest an administrative citation must submit with the request-for-hearing form either an advance deposit of the fine stated in the administrative citation pursuant to section 1.18.060 or a request for an advance deposit hardship waiver pursuant to section 1.18.080. A request-for-hearing form shall be made available at and may be obtained from the City Clerk's office.

B. The Cited Person requesting an administrative hearing shall be notified of the time and place set for the hearing at least 10 days prior to the date of the hearing.

1.18.080 Advance Deposit Hardship Waiver.

A. Any Cited Person who intends to request an administrative hearing under section 1.18.070, and who is financially unable to make the advance deposit of the fine as required by section 1.18.070.A, may file a request for an advance deposit hardship waiver. The request shall be filed with the City Clerk's office on an application form provided by the City Clerk's office within 30 days of the date of the administrative citation. The request shall be reviewed and approved or disapproved by the City Manager. The requirement of depositing the full amount of the fine under section 1.18.070.A shall be stayed until the City Manager makes a determination not to issue the advance deposit hardship waiver.

B. The City Manager may waive the requirement of an advance deposit set forth in section 1.18.070.A and issue the advance deposit hardship waiver only if the Cited Person submits to the City Manager a sworn declaration or affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the City Manager the person's actual financial inability to deposit with the City the full amount of the fine in advance of the administrative hearing.

C. The City Manager shall issue a written determination listing the reasons for his or her decision to issue or not issue the advance deposit hardship waiver. The written determination of the City Manager shall be final. The written determination of the City Manager shall be served upon the person who applied for the advance deposit hardship waiver.

D. If the City Manager decides not to issue an advance deposit hardship waiver, the Cited Person shall remit the deposit to the City within ten days of the date of that decision or 30 days from the date of the administrative citation, whichever is later.

1.18.090 Hearing Officers.

A. Administrative review of administrative citations shall be conducted by a hearing officer. An administrative citation hearing officer shall be appointed by the mayor and shall serve at the pleasure of the mayor.

B. The City Council by resolution may provide for compensation of the administrative citation hearing officer; provided, however, that the employment, performance evaluation, compensation and benefits of the hearing officer shall not be directly or indirectly conditioned upon the amount of administrative citation fines upheld by the officer.

1.18.100 Administrative Hearing Procedure.

A. No administrative hearing to contest an administrative citation shall be held unless the fine has been deposited in advance in accordance with section 1.18.070 or an advance deposit hardship waiver has been issued by the City Manager in accordance with section 1.18.080.

B. The administrative hearing before the hearing officer shall be conducted not less than 15 days and not more than 90 days from the date that the request for hearing is filed in accordance with this chapter.

C. At least 10 days prior to the hearing, the Cited Person shall be provided with copies of the citation, reports and any other documents relied on by the Enforcement Officer.

D. At the administrative hearing, the Cited Person shall be given the opportunity to testify and to present evidence concerning the administrative citation and the related Code violation. The hearing officer shall only consider evidence that is relevant to whether the violation(s) occurred and whether the Cited Person has caused or maintained the violation(s) on the dates specified in the administrative citation. The hearing need not be conducted in accordance with the technical rules of evidence. Any relevant evidence may be admitted if it is of a type upon which reasonable persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make such evidence inadmissible in a civil action. The hearing officer may exclude irrelevant or unduly repetitious evidence.

E. The failure of any Cited Person to timely request an administrative hearing and appear at the hearing shall constitute a forfeiture of the fine and a failure to exhaust administrative remedies.

F. The administrative citation and any additional report submitted by the Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents.

G. The hearing officer may continue the hearing and request additional information from the citing Enforcement Officer or the Cited Person prior to issuing a written decision.

1.18.110 Hearing Officer's Decision.

A. After considering all of the testimony and evidence submitted at the administrative hearing, the hearing officer shall, within 15 days of the hearing, issue a written decision upholding or cancelling the administrative citation, including a brief explanation of the reason or reasons for the decision. The hearing officer's decision shall be served on the Cited Person pursuant to the manner prescribed by section 1.18.160.

B. In cases where the violation involves real property, a copy of the administrative hearing decision also shall be served on the owner of the subject real property, if the owner is different from the person who committed the violation or who is otherwise responsible for the violation.

C. If the hearing officer upholds the administrative citation, then the fine amount on deposit with the City shall be retained by the City. If the hearing officer upholds the administrative citation and, pursuant to an advance deposit hardship waiver, the fine has not been deposited, the hearing officer shall set forth in the written determination a schedule for payment of the fine. If the Cited Person timely files an appeal pursuant to section 1.18.120, payment of the fine shall be deferred pending a decision on the appeal.

D. If the hearing officer cancels the administrative citation and the fine was deposited with the City, then the City shall refund promptly to the Cited Person the amount of the deposited fine.

1.18.120 Appeal of Hearing Officer's Decision.

A. A Cited Person who receives an adverse decision under section 1.18.110 may appeal the hearing officer's decision for review by the planning commission by filing with the city clerk within 10 days of service of such decision, a written notice of appeal containing the challenged citation and the reason(s) for the appeal, together with any material facts supporting the contentions of the Cited Person.

B. As soon as practical after receiving the written appeal, the city clerk shall set a date for hearing of the appeal by the planning commission, which date shall not be less than seven days nor more than 35 days from the date the appeal was filed. The city clerk shall notify the Cited Person of the time and the place of the hearing at least five days before the date of the hearing.

C. The Cited Person shall be responsible for paying an appeal fee prior to the date of the hearing in an amount established from time to time by resolution of the city council.

D. The planning commission shall review and consider the evidence before and decision of the hearing officer and receive and consider arguments and new information, if any, from the Cited Person. Upon conclusion of the appeal hearing, the planning commission by resolution shall do one of the following:

1. Terminate the proceeding and dismiss the citation;
2. Confirm the decision of the hearing officer; or
3. Modify the decision of the hearing officer.

E. The decision of the planning commission shall be final and conclusive. The city clerk shall serve a copy of the planning commission resolution on the Cited Person pursuant to section 1.18.160.

F. If the planning commission upholds the administrative citation, then the fine amount on deposit with the City shall be retained by the City. If the planning commission upholds the administrative citation and, pursuant to an advance deposit hardship waiver, the fine has not been deposited, the planning commission resolution shall set forth a schedule for payment of the fine. If the planning commission modifies the administrative citation, then the fine shall be due and payable as provided in the planning commission resolution. If the planning commission cancels the administrative citation and the fine was deposited with the City, then the City shall refund promptly to the Cited Person the amount of the deposited fine.

1.18.130 Right to Judicial Review.

Any Cited Person aggrieved by the planning commission's decision on an appeal pursuant to section 1.18.120 may seek judicial review of the administrative decision by filing a petition for review with the Yuba County Superior Court in accordance with Government Code section 53069.4.

1.18.140 Late Payment Charges and Interest.

Any Cited Person who fails to pay to the City any fine imposed pursuant to this chapter on or before the date that fine is due also shall be liable for the payment of applicable late payment charges and interest as set forth in the schedule of fines resolution.

1.18.150 Collection of Fines, Late Charges, Interest and Costs.

A. The City may collect any past due administrative citation fines and applicable late payment charges and interest by use of all available legal means. The City also may recover its costs incurred in securing payment of these amounts, which costs shall include, but are not limited to, administrative costs, attorney fees and litigation expenses. Any Cited Person or property owner who has unpaid and/or delinquent fines may be refused the issuance of a land use approval or other City approval pertaining to the property that is the subject of the final administrative citation issued pursuant to this Chapter.

B. The City may seek collection of delinquent fines, late payment charges, interest and costs as:

1. A personal obligation of the Cited Person; and
2. For Continuing Code Violations pertaining to real property, a lien upon the real property on which the violation occurred, imposed pursuant to subsection C.

C. Lien Procedure.

1. The City may record a lien against the subject real property to secure the payment of administrative citation fines, late payment charges, interest and costs for a Continuing Code Violation. A lien created by the City pursuant to this section shall remain in effect until all of the fines, late payment charges, interest and costs are paid in full.

2. Prior to recording any lien, the City Manager shall prepare and file with the City Clerk a report stating the amounts due and owing. The City Clerk shall fix a time, date and place for the City Council to hear and consider the report and any protests or objections to it.

3. At least ten days before the time set for the hearing, the City Clerk shall give written notice of the hearing to the owner of the subject real property. The owner shall be determined based on the last equalized county assessment roll or the supplemental roll, whichever is more current. The notice shall be served in the same manner as a summons in a civil action in accordance with Article 3 (commencing with section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of 10 days and publication thereof in a newspaper of general circulation published in the county in which the property is located pursuant to Government Code section 6062.

4. Any person whose real property is subject to a lien pursuant to this section may file a written protest with the City Clerk and/or may protest orally at the City Council hearing on the matter. Each written protest or objection must contain a description of the subject real property and the grounds of the protest or objection.

5. The City Council, after the hearing, shall adopt a resolution confirming or modifying the amount of the lien, or deciding not to impose the lien. The lien may carry such late payment charges, interest, administrative costs, and attorney fees as authorized by this chapter and set forth in the resolution.

6. Within 30 days following the adoption of a resolution by the City Council imposing a lien, the City Clerk shall record a notice of lien in the Yuba County Recorder's office as a lien against the subject real property.

7. The lien shall have no force and effect until the notice of lien is recorded with the County Recorder. Once recorded, the lien shall have the force, effect and priority of a judgment lien governed by Code of Civil Procedure section 697.340 and may be extended as provided in Code of Civil Procedure sections 683.110 to 683.220. Once a lien is recorded pursuant to this section, interest shall accrue on the principal amount remaining unsatisfied pursuant to law. A lien may be foreclosed by an action brought by the city in the same manner as provided for a judgment lien.

8. Once the City receives full payment for the outstanding fines, late payment charges, interest, costs and other charges set forth in the lien resolution, the City Clerk shall record or cause to be recorded a notice of satisfaction with the County Recorder's office. Such notice of satisfaction shall discharge the City's lien.

1.18.160 Notices.

A. Service of compliance orders, administrative citations, administrative hearing decisions, lien notices and other documents under this chapter shall be as follows:

1. For service on the owner of real property that is the subject of a Code violation, the document shall be:

a. Personally served on the property owner by hand-delivery or mailed to the property owner by prepaid, first class U.S. mail addressed to the owner's address as shown on the last equalized County assessment roll; and

b. Posted in a conspicuous location on the subject real property.

2. For service on other persons, the document shall be either served personally by hand-delivery or sent by prepaid, first class U.S. mail addressed to the person's last known residence address.

B. Failure to receive any notice or other document specified in this chapter shall not affect the validity of proceedings conducted under this chapter.

EXHIBIT B

ORDINANCE NO. 415

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF WHEATLAND
ESTABLISHING ADMINISTRATIVE CITATION
CODE ENFORCEMENT PROGRAM**

The City Council of the City of Wheatland does ordain as follows:

SECTION 1. Purpose and Authority. The purpose of this ordinance is to adopt Wheatland Municipal Code chapter 1.18 establishing an administrative citation program as an alternative to enforce local code violations. This ordinance is adopted pursuant to Government Code sections 53069.4 and 38773.1 and other applicable law.

SECTION 2. Chapter 1.18 Added. Chapter 1.18, consisting of sections 1.18.010 through 1.18.160, is hereby added to the Wheatland Municipal Code to read as shown on Exhibit A, attached hereto and incorporated herein.

SECTION 3. Effective Date. This ordinance shall take effect 30 days after its final passage.

SECTION 4. Posting. Within 15 days from the date of passage of this ordinance, the City Clerk shall post a copy of this ordinance in at least three public places in the City.

INTRODUCED by the City Council on the 11th day of August, 2009.

PASSED AND ADOPTED by the City Council of the City of Wheatland on the ____ day of _____ 2009, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Enita Elphick, Mayor

Attest:

Lisa J. Thomason, City Clerk

I hereby certify that the foregoing is a true and correct copy of the City of Wheatland Ordinance No. 415, which ordinance was duly introduced, adopted and posted pursuant to law.

Lisa J. Thomason, City Clerk

Exhibit C

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF WHEATLAND
ESTABLISHING A SCHEDULE OF FINES
RELATING TO ADMINISTRATIVE CITATIONS
FOR MUNICIPAL CODE VIOLATIONS**

WHEREAS, Wheatland Municipal Code section 1.18.050 authorizes the City Council to approve by resolution fines relating to issuance of administrative citations for Municipal Code violations; and

WHEREAS, the City Council now desires to adopt a schedule of fines relating to administrative citations;

NOW, THEREFORE, BE IT RESOLVED by the City Council that the schedule of fines relating to administrative citations, attached hereto as Exhibit A and incorporated herein by reference, is hereby adopted pursuant to Wheatland Municipal Code section 1.18.050.

PASSED AND ADOPTED by the City Council of the City of Wheatland on this the ____ day of _____ 2009 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Enita Elphick, Mayor

Attest:

By:

Lisa J. Thomason, City Clerk

Exhibit C

EXHIBIT A

**CITY OF WHEATLAND
SCHEDULE OF ADMINISTRATIVE CITATION FINES
FOR MUNICIPAL CODE VIOLATIONS**

Fine Schedule Pursuant to Wheatland Municipal Code section 1.18.050:

1. Fines:

- | | | |
|----|-------------------|-------|
| a. | First Violation | \$50 |
| b. | Second Violation* | \$100 |
| c. | Third Violation* | \$250 |

* Applicable to successive violations of the same Wheatland Municipal Code section within one year.

2. Late Penalty and Interest:

- | | | |
|----|--------------|-----------------------|
| a. | Late Penalty | 10% of amount of fine |
| b. | Interest | 1% per month |

The late penalty and interest shall be assessed on any fine not paid within the deadline provided by Wheatland Municipal Code chapter 1.18.